

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

JEAN PIERRE C. MURRAY et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

SEAN P. REYNOLDS,

Real Party in Interest.

B271577

(Los Angeles County
Super. Ct. No. BC594432)

ORIGINAL PROCEEDINGS; petition for writ of mandate. William F.
Fahey, Judge. Petition granted.

Turner Law Firm, APC, Keith J. Turner, Angelica J. Varela for Petitioners.

No appearance for Respondent.

Miller Law Associates, APC, Randall A. Miller, Susy Koshkakarayan for
Real Parties in Interest.

Jean Pierre Christopher Murray and Kathy Murray (collectively plaintiffs), petition for a writ of mandate directing the superior court to grant their motion to stay a legal malpractice action until the two, underlying lawsuits can be completed. Because the trial court denied the motion based on speculative and inaccurate information, rather than a proper assessment of the requirements of the case, we conclude that the petition must be granted.

FACTS AND PROCEDURAL HISTORY

Plaintiffs are suing attorney Sean Reynolds for legal malpractice. His alleged malpractice occurred with regard to two properties leased by plaintiffs. One was a residence at 916 Benedict Canyon Drive. Plaintiffs retained Reynolds to file suit against the lessors of that property to recover damages for mold-related injuries, and to enforce an option to purchase the property (referred to hereafter as the 916 Benedict Canyon action). Plaintiffs allege that Reynolds's poor and incomplete advice caused them to file the action, and that Reynolds was then deficient in his efforts to prosecute it.

The second property was a residence at 1012 North Beverly Drive. Plaintiffs again retained Reynolds to file an action against the lessor of that property to recover damages under the lease, particularly return of their security deposit (referred to hereafter as the 1012 North Beverly action). Plaintiffs assert that Reynolds's efforts to prosecute that action were also lacking.

Trial in the 916 Benedict Canyon action was set for May 9, 2016. Trial in this malpractice action was set for May 23, 2016. Trial in the 1012 North Beverly action was set for October 17, 2016.

Two months before the first of the trials was set to begin, plaintiffs moved to stay the malpractice action. They pointed out that trial in the 916 Benedict Canyon action had a three-week estimate, and so would not be completed prior to commencement of trial in the malpractice action. The 1012 North Beverly action was not set to be tried until months later. Therefore, plaintiffs argued, the alleged damages in the malpractice action

would not be fully ascertained before the scheduled trial. The plaintiffs were also concerned about suffering some vaguely defined prejudice, related to release of privileged information or entry of conflicting rulings, should they be required to prosecute this action before resolution of the underlying lawsuits.

On March 29, 2016, the trial court denied plaintiffs' motion. Explaining its reasoning, the court first stated "[t]rial in this matter is not scheduled to begin until May 23, 2016, the [sic] parties have advised the Court that settlement discussions in the so-called related cases are ongoing and also that it would make sense for future settlement discussions to include this case." In any event, it noted, trial in the 916 Benedict Canyon action "should be completed before May 23, 2016," and that would enhance settlement discussions in the 1012 North Beverly action.¹ Thus, the trial court left the May 23, 2016 trial date in place, and insisted that the parties go forward. This petition followed. On May 3, 2016, we issued an alternative writ of mandate and stay order, thereby halting the scheduled May 23, 2016 trial date.

DISCUSSION

The plaintiffs' motion to stay was based, in part, on the very real concern that until the underlying actions were resolved, plaintiffs could not ascertain the extent of their damages in the malpractice action. Indeed, the gravamen of the two underlying actions is that Reynolds's poor advice and deficient performance caused damage to plaintiffs for which they are entitled to recover. Necessarily, then, until the underlying actions are concluded, there can be no determination of the extent to which plaintiffs were damaged, if at all, and what questions must finally be addressed in any malpractice trial. The California Supreme Court has observed that courts possess the authority to pause legal malpractice actions while the underlying lawsuits are resolved in order to address such uncertainties, thereby ensuring orderly litigation of the various claims and

¹ Trial in the 916 Benedict Canyon action has since been continued to October 5, 2016.

preservation of the plaintiffs' ability to establish recoverable damages. (E.g., *Adams v. Paul* (1995) 11 Cal.4th 583, 593-594.) As the above-stated facts reveal, exercise of that authority in this matter was warranted because there can be no meaningful trial of plaintiffs' claims, or for that matter settlement negotiations, until the contours of their damages are established.

In fact, the trial court's order here suggests that it understood the need to allow the underlying actions to be resolved before commencing trial of the malpractice action. In denying plaintiffs' motion, the trial court first looked to the possibility that the underlying actions might settle, and so, impliedly, resolve themselves before trial of the malpractice action. Alternatively, the trial court noted that the 916 Benedict Canyon action was set for trial two weeks before the malpractice trial, so "should" be completed in advance of the latter trial, and encourage a settlement of the 1012 North Beverly action to boot. However, such resolutions of the underlying actions were illusory, and so were insufficient to support the trial court's order.

To begin, there was little evidence that any of the cases were close to settling. At oral argument, it was reported that one of the underlying cases, presumably the 916 Benedict Canyon action, had undergone one day of mediation but had not settled, though the mediation might be resumed, perhaps with Reynolds included. Otherwise, there was no information at all regarding the progress of settlement discussions in the underlying actions, let alone an indication that an agreement in either case was imminent. Similarly, with regard to the malpractice action, the discussion at oral argument was that the parties would engage in mediation in the future, but only because the trial court had ordered them to do so. In fact, the parties had not even agreed upon a mediator who could consider their positions, and were warned by the trial court that time was running short even for that minor task. Indeed, as the parties acknowledge in their briefing here, all of the litigations are still pending.

As for the trial court's reasoning that the 916 Benedict Canyon action would be complete prior to commencement of the malpractice action, the evidence was directly contrary to the court's statement. The 916 Benedict Canyon action's trial carried a three-

week estimate. Trial of the malpractice action was set to start just two weeks after the 916 Benedict Canyon action's trial commenced. On its face, then, the trial court's statement was inaccurate. Its further implication that the result of the 916 Benedict Canyon action could be immediately digested by the parties and converted to evidence for presentation at the malpractice trial was equally flawed. Moreover, the trial court's conclusion essentially ignored the fact that the 1012 North Beverly action also had to be resolved before the damages at issue could be fully assessed and the malpractice trial begun, giving that case only glancing attention by speculating that it might also settle once the 916 Benedict Canyon action was completed.

Instead, if the trial court had been true to its own reasoning, it would have recognized that trial of the malpractice action could not go forward as scheduled on May 23, 2016. The matter needed to be stayed until a true resolution of the two underlying cases had been accomplished. Then, the matter could have proceeded in a definitive fashion, and perhaps even resolved without the necessity of a trial. In short, the trial court should have granted plaintiffs' motion for a stay, and that is what we now direct the trial court to do.

Reynolds makes much of the fact that the he offered to stipulate to a stay like the one plaintiffs now seek at the outset of the malpractice action, but plaintiffs rejected his offer and did not object when the trial court set a May 23, 2016 trial date at the case management conference.² He takes the position that plaintiffs have thereby waived any argument that they are entitled to a stay now. However, punishing plaintiffs for an earlier misjudgment is not a valid basis for rejecting a stay. Nor is it appropriate to push for an early trial in a manner that would foreclose plaintiffs from fully proving their potential damages. Moreover, despite his protestations, Reynolds fails to demonstrate any substantial prejudice to his ability to defend the malpractice action that would warrant rejecting the requested stay.

² Plaintiffs dispute the idea that they did not object to the trial setting.

DISPOSITION

The petition is granted.³ A writ of mandate hereby issues directing the trial court to vacate that portion of its March 29, 2016 order that denies plaintiffs’ motion to stay and to enter a new and different order granting the motion pending resolution of the 916 Benedict Canyon action and the 1012 North Beverly action. The parties are to bear their own costs with regard to this proceeding.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, P.J.
BOREN

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT

³ Reynolds has filed a sur-reply that includes a motion to strike the declaration of plaintiffs’ counsel, which was submitted with plaintiffs’ reply brief, as well as a portion of the reply brief that refers to matters occurring after the proceedings at issue here. The motion is granted because on writ review the court will not consider evidence that was not before the trial court at the time of its ruling. (*Pomona Valley Hospital Medical Center v. Superior Court* (2013) 213 Cal.App.4th 828, 835, fn. 5.) Specifically, the Declaration of Keith Turner, filed June 6, 2016, is stricken, as is the portion of the reply brief that starts on page five, last partial sentence, beginning with the words “However, Reynolds,” and continues to the first full sentence on page six, ending with the words “their lawsuit.” For the same reason, the Declaration of Sean Reynolds, filed July 7, 2016, with the sur-reply, must also be stricken, along with the portion of the sur-reply that begins on page four, first full paragraph, beginning with the words “In the event,” and continues to page five, first full paragraph, ending with the words “attorney’s fees.”